REMARKS

The Examiner's attention to the present application is greatly appreciated.

Claims 4 - 6 and 15 - 20 are pending in the present application. Claims 4 - 6 have been rejected in the recent Office Action of August 22, 2008. However, Claims 15 - 20 have been allowed.

Claims 4 - 6 have been rejected under 35 U.S.C. §103. Applicant disagrees with the Examiner's argument in support of its rejection. Notwithstanding, Applicant has amended independent Claim 4 to clarify that the pressure sealing doors form a "gaseous tight sealed" pressurizeable stage. Furthermore, Claim 4 has been amended to clarify that the pressurizing means is provided for controlling the pressure of the pressurizeable stage and for increasing the pressure within the pressurizeable stage to a level sufficient to prevent sealed packages from bursting upon application of heat. Support for these amendments can be found on page 8, lines 3 - 9; and page 14, line 17 - page 16, line 21. This amendment has been made primarily to differentiate Applicant's invention from the prior art, and particularly *Chitre* which does not disclose a quadrilateral pressurized and sealed stage as claimed by Applicant, and instead discloses a non-sealed system wherein pressure is limited to provided by a fan.

Applicant has also amended Claim 4 to clarify the positioning of the microwave sources as being on opposing sidewalls. Support for this amendment can be found in the drawings and specification at the bottom of page 8.

Reexamination, reconsideration and allowance of the claims is requested.

REJECTION UNDER 35 U.S.C. §103

Claims 4 - 6 were rejected under 35 U.S.C. §103 as being unpatentable over *Chitre* (U.S. Patent No. 4,683,895) in view of *Ruozi* (U.S. Patent No. 5,074,200). Respectfully, as now clarified by the amendment to independent Claim 4, the claimed invention of a quadrilateral pressurized stage with opposing microwave sources is not disclosed in the prior art.

Invention of Claims 4 - 6

Claims 4 - 6 are directed to a conditioning system for sterilizing products within sealed packages. The conditioning system includes a product conditioning unit including a tunnel having two pairs of parallel sidewalls having a substantially quadrilateral cross-section. The tunnel is subdivided into one or more consecutively aligned stages including a pressurizeable stage. The pressurizeable stage includes a "heating means" including microwave sources directly connected to a pair of opposing sidewalls so that products traveling upline to downline through the tunnel are positioned between the microwave sources.

These features are not disclosed or suggested in the prior art.

Chitre

Chitre describes a microwave tunnel which could arguably be described as having a quadrilateral cross-section. *Chitre* does not describe or suggest a conditioning tunnel including pressure sealing doors or a pressurizing means for controlling the pressure within the tunnel.

Plainly, *Chitre* does not describe a conditioning tunnel which is airtight because each chamber includes a flue 65. Furthermore, the bottom of column 5 states that small portions of the apertures are not closed off by the doors. Thus, it is impossible for the *Chitre* system to be airtight.

The Examiner refers to column 6, lines 10 - 25 which indicate that the tunnel may have a controlled gaseous environment. As described in this section, gas can be directed to flow into the chamber. As would be understood by one skilled in the art, the introduction of gases is to alter the type of gas within the tunnel, such as to introduce an increase in oxygen or to introduce an inert gas such as nitrogen. However, *Chitre* does not disclose that the introduction of the gas provides any positive pressure. *Chitre* makes no reference whatsoever of an increased atmospheric pressure within the tunnel of any kind. Moreover, column 4, lines 52 - 62 clarify that the *Chitre* tunnel includes an exhaust flue 65 where vapors are emitted. The *Chitre* tunnel is therefore clearly not gas tight, and certainly not capable of maintaining a positive pressure sufficient to prevent sealed packages from otherwise bursting.

Ruozi

Ruozi discloses a conditioning system for sterilizing products. *Ruozi* describes a conditioning tunnel having a circular cross-section (see Fig. 4). Furthermore, *Ruozi* discloses a conditioning tunnel wherein microwave sources are positioned to opposite sides of products. However, there is no suggestion within *Ruozi* for a pressurizeable stage having a quadrilateral cross-section.

Analysis

It is fundamental that a patentee's claims cannot be reconstructed "from selected pieces of prior art absent some suggestion, teaching, or motivation in the prior art to do so." *C. R. Bard, Inc. v. M3 Systems, Inc.*, 48 U.S.P.Q. 2d 1225, 1232 (Fed. Cir. 1998). Moreover, "(t)here must be a teaching or suggestion. . .to combine them in the way they were combined by the inventor." *ATD Corp. v. Lydall, Inc.*, 159 F3d 534 (Fed. Cir. 1998). Arguments that modifications of the prior art would have been "well within the ordinary skill of the art" are improper. *Ex Parte Levengood*, 28 U.S.P.Q. 2d 1300 (B.P.A.I. 1993). Meanwhile, in *In re Kotzab*, 217 F.3d 1365 (Fed. Cir. 2000) the Federal Circuit explained that where there is no specific teaching in the prior art, it is improper to merely reject claims contending that the understanding would be within the knowledge of a skilled artisan and that would have provided the motivation to make the claimed invention. Similarly, in *Al-State Corp. v. VSI International, Inc.*, 174 F.3d 1308 (Fed. Cir. 1999), the court held that the level of skill in the art cannot be relied upon to provide the suggestion to make the modifications. Instead, the prior art must teach the modifications. Even the M.P.E.P. expressly states that a statement by the Examiner that modifications to the prior art "would have been well within the ordinary skill of the art" is not sufficient to establish obviousness without some objection teaching in the references. See M.P.E.P. §2143.01.

In the present case, the prior art does not suggest a pressurizeable stage which is gaseous tight and includes a "pressurizing means" for increasing the pressure to a sufficient level to prevent sealed packages from bursting upon application of heat. To the contrary, *Chitre* expressly states that the conditioning tunnel includes a flue for release of gases and that the doors are not gas tight.

Meanwhile, *Ruozi* discloses a pressurizeable tunnel having a circular cross-section. The reasoning for such cross-section is understood as pressure vessels having a cylindrical structure are well known to be adapted for the stress and strain imparted by internal pressure. Any change from this circular cross-section would be counter to the traditional thinking.

Meanwhile, as explained at the bottom of page 8, Applicant recognized that a tunnel having a quadrilateral cross-section increased the number of available magnetrons at right angles to the axis of products being treated. This advantage was not recognized by the prior art and certainly not obvious in view of the traditional cylindrical structure that was considered most useful for pressurized applications.

Accordingly, independent Claim 4 is believed allowable, as are its dependent Claims 5 and 6.

CONCLUSION

Claims 4 -6 and 15 - 20 are believed allowable and notice thereof is respectfully requested. If there are any remaining issues that need to be resolved, it is requested that a telephone call be placed to the undersigned.

Respectfully submitted,

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